

RECEIVED

DOCKET FILE COPY ORIGINAL

SEP 15 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of)
)
Reallocation Channels) **ET Docket No. 97-157**
60-69, the 746-806 MHz Band)

To: The Commission - Mail Stop 1170

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association ("CBA") hereby submits these Comments in response to the Commission's *Notice of Proposed Rule Making* ("Notice") in this proceeding, FCC 97-245, released July 10, 1997. CBA is the trade association of the nation's low power television ("LPTV") industry and represents the interests of LPTV stations before the Commission and other forums.

2. CBA urges the Commission to mitigate the impact of spectrum reallocation on LPTV stations to the maximum extent possible by phasing in reallocation over time and by allowing LPTV operators on Channels 60-69 (a) to remain on their existing channel as long as they can do so without causing interference to a new primary user, (b) to negotiate with new users to co-exist where possible, and (c) to apply for displacement relief and to move to lower channels any time they are ready. Channels selected for reallocation should be selected in the reverse order of their impact on LPTV stations;^{1/} and displacement of an LPTV station should weigh against the grant of an application for a new full power television

^{1/} CBA believes that similar relief is appropriate for TV translators operating on Channels 60-69. The Commission notes (at fn. 3 of the *Notice*) that some 1,309 LPTV stations and translators are threatened by reallocation of Channels 60-69. That is an enormous amount of programming service that the public stands to lose.

100 of Original filed
SEP 15 1997 029

station on Channels 60-69 where no application for that channel has yet been accepted for filing, particularly where a waiver of the freeze in the top 30 markets is involved.^{2/}

3. While the public safety community has made a case for additional spectrum for public safety use in some areas, the case is not as clear as to how much spectrum is needed in any specific geographic area or how quickly new spectrum will be deployed after reallocation. Thus there are many opportunities to accommodate public safety needs without destroying the important local service that LPTV stations provide -- often the only local service in a geographically small community or the only service to a minority or other specialized audience in a geographically larger community.

4. The allocation of 24 MHz to public safety is an enormous amount of spectrum. When the 450-470 MHz band was opened to land mobile use, that entire band could be divided into 800 channels at the 25 kHz bandwidth that became the standard; and only a small portion of those 800 channels were reserved for public safety use. When the 806-821 and 851-866 MHz bands were opened, they provided 1,200 more channels at 25 kHz each, again with only a small portion reserved for public safety. In contrast, at the 6.25 kHz bandwidth that the Commission has already mandated for future land mobile use, each television channel of 6 MHz will yield 960 channels exclusively for public safety; and 24 MHz will yield **3,840** new channels. Even if a less efficient 12.5 kHz spacing is assumed, there will be 1,920 channels, which, with the benefit of modern trunking technology will provide the public safety community with at least 10 times, if not double or quadruple that much, the communications capacity it has ever had available in the past.

^{2/} See fn. 29 of the Notice.

5. It is inconceivable that all this spectrum will be needed everywhere in the country; and even in the very largest markets where the need may be greatest, it will take time for the new spectrum to be deployed. New equipment must be developed and type accepted by manufacturers; public safety agencies must acquire funding for new equipment and then make acquisitions (often through a formal bidding process); and those agencies must organize, plan, and provide training for using the new channels. Keeping in mind that in many (although not all) cases, LPTV stations are likely to be located away from the largest markets where public safety's needs are most immediate, there is ample opportunity to phase in public safety operations and to phase out LPTV and translator service over time; and it should be possible to maintain LPTV service for many years to come.

6. To mitigate the adverse impact on LPTV stations, CBA first urges the Commission not to lock itself into a fixed allocation scheme where the same channels are allocated for public safety use nationwide.^{3/} In each geographic area, the Commission should reallocate spectrum to public safety one TV channel at a time; and it should require each 6 MHz channel to be substantially filled before the next one is opened up.^{4/} Further, any channel occupied by an operating LPTV station should be the last one reallocated to any

^{3/} As the Commission is aware from its experience with land mobile allocations and its attempts in recent years to combine frequency pools, subdividing spectrum into categories with narrow eligibility limitations results in inefficient spectrum use, because spectrum remains idle waiting for an eligible user to come along while an ineligible user may be unable to find available spectrum in its own pool.

^{4/} Requiring a minimum density of spectrum use before opening up more channels is a basic efficiency concept.

other use, public safety or otherwise, in that geographic area, unless and until a new channel below Channels 60-69 is found for that LPTV station.^{5/}

7. When it becomes necessary to displace an LPTV station, the Commission should make every effort to minimize the resulting disruption. A change of channels for an LPTV station is difficult in many respects. It is costly, as at least a new antenna, if not a new transmitter as well, is almost always needed. The new antenna must be installed at additional expense after it is purchased. In addition, "channel identification" is important to any medium of mass communication. Whenever a station moves to a new channel or dial location, some viewers lose track of it, and revenues are lost. It is thus very important that no station ever have to be relocated twice if at all possible.^{6/}

8. To avoid such disruption, an LPTV station should not be required to change channel until a new user is actually ready to commence actual operation and the LPTV station and new user have been unable to come to a private accommodation that would allow

^{5/} CBA believes that the Commission has chosen wisely in selecting Channels 63, 64, 68, and 69 for public safety use as a starting point (the "proposed public safety channels"), although those channels should still be avoided where occupied by an operating LPTV station. A review of a list of 255 LPTV licenses on Channels 60-69 provided by the Commission's Staff indicates that only 88 stations operate on the proposed public safety channels, twelve states have no licenses on any of the four channels, sixteen states have licenses on only one of the channels, ten states have licenses on only two of the four channels, and no states have licenses on all four proposed public safety channels. Further, only ten of the 88 LPTV stations are in the center city of the top 30 markets. Thus while the task of relocating LPTV stations on the proposed public safety channels should not be underestimated, it will hopefully be more manageable than if other channels were selected for reallocation.

^{6/} CBA has previously urged, and continues to urge, that LPTV stations be compensated for all displacements, but at a minimum they should be fully compensated by a new spectrum user for any second displacement. The cost of such compensation should be factored into the capital investment plans of the new user.

both to co-exist.^{7/} On the other hand, if an LPTV operator sees no way to avoid eventual displacement, it should be able to apply for a new channel immediately, without waiting for the new user to commence operation, without any requirement for an LPTV application filing "window," and without exposure to competing applications from stations which are not also displaced. Some LPTV operators may elect to remain on their existing channel as long as possible; but others may plan to invest in new equipment or in repairs that make little sense for short-term operation, and those operators should be able to move to new channels before making their investment.^{8/} Thus LPTV displacement applications by stations operating on Channels 60-69 should be permitted at any time, commencing immediately or at least upon the conclusion of the instant rule making, without requiring any LPTV application filing "window."^{9/} Each LPTV operator should be able to decide whether to move sooner or later; some will want to move soon, and others may not want or have to move for many years.^{10/}

^{7/} CBA sees no reason why privately-negotiated co-existence arrangements should ever be forbidden, including arrangements where an LPTV operator pays compensation to a new user to delay the commencement of operation, to induce that user to seek a different frequency, or to disaggregate spectrum or geographic operating area.


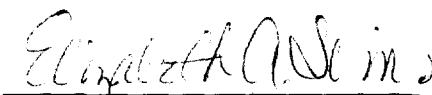
^{8/} Those who do apply early should be required to complete the move to the new channel within a reasonable time -- not more than 18 months -- after a grant of their application, as they should not be permitted to warehouse spectrum any more than any other spectrum user.

^{9/} CBA believes that LPTV licensees on channels below 60 that face displacement from digital television stations should also be free to apply for displacement relief at any time, but that question is not the subject of this proceeding.

^{10/} It continues to be important, as the Commission has already directed, that LPTV operators be included in any industry negotiation and coordination efforts (*Notice* at par. 18).

9. While Congress has directed the Commission to reallocate Channels 60-69, the finding discussed at Par. 18 of the *Notice* that the benefits of spectrum recovery outweigh the impact of any action on LPTV stations is that of the Commission, not Congress, and is a finding with which CBA strongly disagrees. Moreover, CBA believes that even if public safety needs are urgent, the need for more spectrum for commercial purposes is much less so. In any event, preserving service from operating LPTV stations should be given a high priority. As the Commission itself has said at Par. 18 of the *Notice*, and as discussed in these Comments, preservation may be achieved in many, if not all, cases consistent with long-term spectrum reallocation, by introducing new uses on a phased-in basis, allowing an LPTV station to remain in operation on Channels 60-69 until a new user is actually ready to operate, and allowing displaced LPTV operators to move quickly to another channel when and as they are ready to do so.

Respectfully submitted,


Peter Tannenwald
Elizabeth A. Sims

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

Counsel for the Community
Broadcasters Association

September 15, 1997